

JEAN HUBBIRD WATERS

IBLA 84-907

Decided October 16, 1985

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting application for conveyance of mineral interests. ES 32477.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests

An application for conveyance of mineral interests to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1982), may be approved where BLM determines (1) there are no known mineral values in the land, or (2) the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

APPEARANCES: C. LeNoir Thompson, Esq., Bay Minette, Alabama, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Jean Hubbard Waters has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated August 27, 1984, which rejected her application for conveyance of the Federal mineral interest in approximately 80 acres constituting the N 1/2 SE 1/4, sec. 7, T. 5 N., R. 33 W., Tallahassee Meridian, Florida. As the basis for rejecting appellant's application, BLM determined appellant had not fulfilled either condition for conveyance of mineral interests owned by the United States established by section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1982). The decision also assessed appellant with administrative costs of \$532.82 for administrative processing. These costs were proposed to be taken from a \$1,500 payment appellant had tendered to BLM with her application. The \$1,500 amount was apparently intended to be an offer of payment for the reserved mineral interest owned by the United States. This payment was not demanded by BLM, but was furnished by appellant in apparent reliance upon a valuation previously established in the case of another landowner in the vicinity, whose mineral estate was valued at \$25 per acre.

Appellant outlined plans to use the tract for a residential subdivision in her application for conveyance. The United States had obtained the land, to which the mineral estate is now sought, by foreclosure on a Farm Security Administration loan. On July 2, 1946, the United States conveyed the land to appellant's predecessors-in-interest, retaining an undivided three-fourths mineral interest and reserving a right of access and rights to use the surface as necessary to exploit the mineral interest. The administration of retained mineral interest was transferred to BLM, by order dated June 5, 1981.

BLM received appellant's application for conveyance of the mineral estate on April 21, 1983. On January 18, 1984, BLM completed a geological report of mineral values for appellant's tract. The Deputy State Director, Mineral Resources, summarized the agency findings concerning value of the Federal mineral interest in a memorandum dated March 8, 1984:

The subject lands have been classified as being prospectively valuable for oil and natural gas with greater than nominal value and prospectively valuable for sand and gravel, clay and limestone at nominal value. The total FMV [fair market value] of the Federal minerals interest (75 percent) of the subject tract is \$41,535 (or \$519 per net Federal mineral interest acre).

The total FMV figure of the Federal mineral interest is composed of \$40,635 for the oil and gas reserves and \$900 for the sand and gravel, clay and limestone reserves.

\* \* \* \* \*

It should be noted that an 80-acre tract adjacent (S1/2SE1/4) to the subject tract was given a FMV of \$25 per acre under a previous Section 209 application (ES-30432). However, the evaluation was conducted in May 1982, which was prior to the completion of [a] new [oil] well [in Escambia County, Alabama].

The discovery of reserves by Beau Coup Oil and Gas Corporation, plus other developments in Escambia County, Florida, Escambia County, Alabama, and Baldwin County, Alabama have increased lease values to an average bonus of \$250 per acre.

The final fair market value of the oil and gas reserves of the subject tract of \$40,635 represents the expected value of the net present worth of the royalties of the Federal mineral interests. The final fair market value was derived by calculating appropriate Federal royalties based on a production schedule resulting from the engineering analysis. The royalties were discounted over the life of the well in order to arrive at a net present worth figure. A dry hole risk factor was applied to this figure to arrive at an expected value of the Federal share of the tract's royalty.

The geologic report indicated that deposits of sand and gravel, clay and limestone are likely to be present on the subject tract. The recommendation was made that a nominal value be

assigned to these minerals. The nominal value of \$5 per acre is given to each of the three commodities. [Emphasis in original.]

(Memorandum dated Mar. 8, 1984, at 1, 2).

On May 3, 1984, BLM informed appellant of the mineral appraisal and outlined the statutory conditions for conveyance. The BLM notice stated:

Since it has been determined that significant mineral values are present in this case, you must provide evidence that the subject mineral reservation is interfering with your use of the land and that your use is more beneficial than the development of the minerals. Please note that mere prospective interference (e.g., the possibility that a federal mineral lease might issue and development might take place) is not sufficient to satisfy the standard set by Section 209. It should be noted also that the issuance of a federal oil and gas lease would not, of necessity, lead to interference since many such leases contain "no occupancy" stipulations which require the lessee to conduct its drilling operations outside the leased area (by slant-drilling or otherwise) and since federal regulations prohibit drilling within 300 feet of a dwelling or other structure.

BLM allowed appellant 30 days within which to provide evidence of circumstances showing how the mineral reservation is interfering with or precluding appropriate nonmineral development of her land and that such development is a more beneficial use of the land than mineral development, pursuant to FLPMA, 43 U.S.C. § 1719(b) (1982). BLM informed appellant that if she did not respond, her application would be rejected and the portion of her deposit in excess of administrative costs would be refunded. On June 7, 1984, appellant responded to the BLM by challenging the accuracy of the BLM mineral valuation, and restated her offer to pay a lower amount, in the sum of \$1,869. BLM rejected appellant's application on August 27, 1984.

On appeal to this Board, appellant argues there are no valuable minerals underlying her land. Appellant states that of two nearby wells drilled for oil or gas, the well farthest from her land was a producer, while a well 3-1/2 miles from her property had no production and was closed. She also recites that in 1965 a dry well was drilled about 1-1/2 miles to the south of her land. Appellant contends oil exploration or production activity would threaten her farm area, pecan grove, or timber.

[1] Provisions of FLPMA establish either of two conditions required to permit conveyance of Federal mineral interests:

The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that

such development is a more beneficial use of the land than mineral development.

43 U.S.C. § 1719(b)(1) (1982). See also 43 CFR 2720.0-2. In its August 27, 1984 decision BLM concluded that neither statutory condition had been met by appellant.

Appellant contends her land is without mineral value, pointing to dry or capped wells nearby. Although she disagrees with BLM concerning the wells' proximity to her land, appellant concedes that another nearby well is producing hydrocarbons. Where there is nearby oil production, the existence of two nearer dry wells has been held not to establish that land lacks mineral value under 43 U.S.C. § 1719(b) (1982). See, e.g., Dean A. Clark, 53 IBLA 362 (1981), where oil production was 5 miles and 7 miles from a similarly disputed parcel. Given its geologic findings, BLM properly found known mineral value 1/ in this tract so that the first statutory condition which might have allowed a conveyance was not met. 43 U.S.C. § 1719(b)(1) (1982).

As to the second statutory condition, appellant offers nothing to show how the mineral reservation in the United States would preclude or interfere with her planned use of the land, nor has she offered proof that her nonmineral development serves a more beneficial purpose than would oil and gas development. She indicates she now has domestic and agricultural uses for the tract: a house, field, pecan grove, and timber. Earlier she stated a residential development was contemplated. However, she has not indicated how, if oil and gas exploration were to occur, it would interfere with her planned use of the land. Consequently, appellant did not satisfy the second statutory condition which could have permitted conveyance. Jerry R. Schuster, 83 IBLA 326, 328 (1984).

The burden is on appellant to present a convincing and persuasive argument to rebut the BLM determination that her land has mineral value. See Dean A. Clark, supra at 364. Absent a clear and definite showing of error, the BLM determination will not be disturbed. Robert Gattis, 73 IBLA 92 (1983). The record establishes that neither necessary condition for conveyance of the Federal reserved mineral interest was met here. As a consequence the decision on appeal must be affirmed. 2/

---

1/ "Known mineral values" as that term is used in 43 U.S.C. § 1719(b) (1982) is defined to mean: "[M]ineral values in lands with underlying geologic formations which are valuable for prospecting for, developing or producing natural mineral deposits. The presence of such mineral deposits in the lands may be known, or geologic conditions may be such as to make the lands prospectively valuable for mineral occurrence." 43 CFR 2720.0-5(b).

2/ In the event appellant wishes to obtain mineral interests other than oil and gas, she may wish to apply for conveyance of those interests. Since, however, nothing in the record indicates she seeks to obtain interests other than oil and gas, no consideration has been given, either by BLM or this Board, to whether a conveyance of the sand and gravel, clay and limestone referred to in the March 8, 1984, geologist's report might be proper.

Appellant also objects to the use of a part of her deposit for administrative costs. The applicable statute provides:

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section--

(i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance \* \*

43 U.S.C. § 1719(b)(2) and (3) (1982). See also 43 CFR 2720.3. BLM therefore properly assessed administrative costs against the applicant, as required by law.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States office is affirmed.

---

Franklin D. Arness  
Administrative Judge

I concur:

---

Will A. Irwin  
Administrative Judge

## ADMINISTRATIVE JUDGE MULLEN DISSENTING IN PART:

I agree with the basic findings of my colleagues but believe the case should be remanded to BLM for further consideration.

Appellant filed an application for conveyance of retained minerals pursuant to 43 U.S.C. § 1719 (1982). After examination, BLM found the land to be prospectively valuable for oil and gas and nominally valuable for sand and gravel, clay, and limestone. The value placed on the mineral interest retained by the Federal Government (undivided 75 percent) was \$41,535.

On May 3, 1984, in a letter written to appellant, BLM requested additional information. The pertinent part of the letter stated:

The Bureau of Land Management (BLM) has determined that the land has a mineral value of \$40,635.00 for the oil and gas reserves, and a mineral value of \$900.00 for the sand, gravel, clay and limestone reserves. Therefore, the fair market value for this land is considered to be \$519.000 [sic] per acre.

Section 209(b) of the Federal Land Policy and Management Act (43 U.S.C. 1719) states that the Secretary of the Interior may convey mineral interests owned by the United States only if (1) there are no known mineral values in the land or (2) the reservation of the mineral rights by the United States is interfering with or precluding appropriate nonmineral development and that such development is a more beneficial use of the land than mineral development.

Since it has been determined that significant mineral values are present in this case, you must provide evidence that the subject mineral reservation is interfering with your use of the land and that your use is more beneficial than the development of the minerals. Please note that mere prospective interference (e.g., the possibility that a federal mineral lease might issue and development might take place) is not sufficient to satisfy the standard set by Section 209. It should be noted also that the issuance of a federal oil and gas lease would not, of necessity, lead to interference since many such leases contain "no occupancy" stipulations which require the lessee to conduct its drilling operations outside the leased area (by slant-drilling or otherwise) and since federal regulations prohibit drilling within 300 feet of a dwelling or other structure.

You have 30 days from receipt of this letter in which to provide this office with satisfactory evidence of interference and superior beneficial use. If you do not respond within this time period, we will reject your application and refund that portion of your advance deposit which is in excess of the administrative costs incurred in processing it. [Emphasis in original.]

As can be seen, the letter is phrased in a manner which leads to the conclusion that, in order to obtain title to the retained minerals, appellant

was required to show that the reservation would preclude nonmineral development and that nonmineral development would be a more beneficial use of the land than mineral development. To this extent, the letter correctly outlined the requirements. However, a reasonable interpretation of the required proof outlined in this letter would also lead to the conclusion that, in order to meet the statutory requirement for conveyance of any of the mineral interests, appellant must demonstrate that the proposed use of the land would preclude the issuance of an oil and gas lease with a "no surface occupancy" provision. Appellant was never informed that she might also seek to obtain a conveyance of minerals other than oil and gas by proof of interference with nonmineral development and higher beneficial use. 1/ It is hard to imagine the extraction of sand and gravel, for example, without surface occupancy.

Appellant was assessed \$532.82 for administrative costs incurred in preparation of the geologic report, fair market value determination, and related costs. I agree with the majority that this assessment was properly levied. The majority states that if appellant now desires to obtain the sand and gravel, clay, and limestone (all minerals other than oil and gas) she may reapply for a conveyance of those minerals. In doing so she would again incur the same administrative costs.

It seems more equitable and proper for the case to be remanded for consideration of conveyance of all minerals other than oil and gas. 2/ This would avoid the additional costs of filing and processing a second application. Otherwise appellant could easily expend more for processing her applications than she would have to pay for minerals other than oil and gas.

---

R. W. Mullen  
Administrative Judge

---

1/ A comparison of the provisions of 43 U.S.C. § 1719 (1982) and Recommendation 55 of the Public Land Law Review Commission (One Third of the Nation's Land (1970) at 136) leaves little doubt this law was enacted in response to Recommendation 55. It is also clear the Public Land Law Review Commission contemplated a conveyance of separate mineral interests.

2/ In Temblor Enterprises Inc., 86 IBLA 175 (1985), BLM composed the conveyance of all minerals other than oil and gas. Temblor Enterprises challenged the decision regarding the existence of oil and gas. The Board found the proposed conveyance to be proper. The approach taken by BLM in Temblor would have been more appropriate in this case.

